

## REMARKS

### *Claim Rejections under 35 U.S.C. § 112*

Claims 32, 65, and 75-79 stand rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. It is respectfully submitted that the examiner has not met his burden of establishing a *prima facie* case of lack of written description. For example, the examiner has to present evidence or a reasoning *why* a person skilled in the art would not recognize in the original disclosure a description of the invention defined by the claims. MPEP § 2163(II)(A)(3)(b). Specifically, the examiner is to identifying the claim limitation at issue *and* provide a reason why a person skilled in the art would not have recognized that the inventor was in possession of the claimed invention. *See* MPEP § 2163.04(I).

In the Office action, the examiner merely concludes that the specification does not describe the subject matter in such a way as to reasonably convey to one skilled in the relevant art that the inventor at the time that the application was filed had possession of the claimed invention. *See* Paper No. 20060816, page 2. The examiner does not explain *why* this is so. Thus, for this reason, the examiner has not sustained his burden.

Nevertheless, claims 32, 65, and 75 have been amended to be similar to, but not necessarily the same as, a portion of claim 66. Claim 66 was not rejected under § 112. In view of the amendments to claims 32, 65, and 75, any question regarding compliance with the written description requirement is moot. Furthermore, as claim 32 was not rejected over a prior art reference, claim 32 is now in condition for allowance.

Claims 70-73, 75-79, and 81 stand rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. This rejection is respectfully traversed.

Possession of a claimed invention may be shown by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention. *See* MPEP § 2163(I); 2163.02. Furthermore, there is no *in haec verba* requirement—the subject matter need not be described literally in the specification to satisfy the written description requirement. *See* MPEP § 2163(I)(B); 2163.02. It is respectfully submitted that the specification, including the figures, shows that the inventor had possession of the claimed invention at the time the application was

filed. *See* specification at least at page 8, lines 9-21 and Figures 1 and 2. *See also* Amendment Accompanying Request for Continued Examination submitted on July 3, 2006, page 10.

Claims 67-69 stand rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. For the reasons expressed above with respect to claims 32, 65, and 75-79, the examiner has not established a *prima facie* case of lack of written description. Furthermore, the rejection cites to terminology that is not included in the claim, therefore the rejection is not understood. Nevertheless, to further prosecution toward allowance of the claims, claim 67 has been amended. This amendment is clearly supported by the specification including the figures. *See* Figures 1, 3, 8, and 10.

Claims 70-73, 75-79, and 81 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite. This rejection is respectfully traversed.

Definiteness of claim language must be analyzed in light of the content of the particular application disclosure, the teachings of the prior art, and the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made. *See* MPEP § 2173.02, Clarity and Precision. Furthermore, the applicant may be its own lexicographer and he or she can define the claims in what they regard as the invention essentially in whatever terms they choose as long as any special meaning assigned to a term is clearly set forth in the specification. *See* MPEP § 2173.01. The specification provides original support for the language “folded...to assume a smaller cross-sectional configuration” at least at page 4, lines 17-25 and page 8, lines 14-17. Although the examiner’s suggested claim language is appreciated, reconsideration of the rejection in view of the content of the application disclosure is requested.

### ***Double Patenting***

The examiner provisionally rejected claims 32, 65, 66, and 69 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 58, 48, 48, and 7 respectively of copending application 10/832,159. Although the applicant does not agree with the examiner’s rejection, the applicant notes that upon receipt of an indication of allowance, a terminal disclaimer may be filed to overcome any sustainable double-patenting rejection.

### ***Claim Rejections—35 U.S.C. § 102***

Claims 65-73, 75-79, and 81-82 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Dwyer (US 5,843,167).

Claim 65 has been amended to make clear that a ring is formed of a bundle of windings of a strand of resilient metal wire and that the windings are connected together to form the ring. Thus, a diameter of the ring is substantially the same as a diameter of the bundle of windings. Because the diameter of the ring is greater than the diameter of the tubular graft, the diameter of the bundle of windings is also greater than the first diameter of the tubular graft. Clearly, as shown in Figure 35 of Dwyer, a spring 144 does not have a diameter that is substantially the same as the diameter of the anchor 14R much less a diameter that is greater than a diameter of the tubular graft. For at least this reason, claim 65 is patentably distinguished over Dwyer.

Under a similar analysis, claim 66 is also patentably distinguished over Dwyer.

Amended claim 67 recites a ring having a diameter and comprising windings formed of a single strand of resilient metal wire, the diameter of the ring substantially the same as the diameter of at least one of the windings. The windings are wound one over the other and are connected together to form a bundle. The bundle of windings has a substantially circular cross-section, the cross-section taken through any portion of the ring along a line that is parallel to a longitudinal axis (of a tubular graft) such that no matter where the cross-section is taken on the ring, the cross-section of the windings is substantially circular. Claim 67 is patentably distinguished for at least the following reasons. First, the diameter of a spring 144 in Dwyer is not substantially the same as the diameter of the anchor 14R. Second, the springs 144 are wrapped around the anchor 14R at apexes only. *See* Figure 35. Therefore, a cross-section can be taken through portions of Dwyer's anchor 14R that are not also through the springs 144. For at least these reasons, claim 65 is patentable over Dwyer.

Claim 70 is not anticipated by Dwyer. For example, claim 70 calls for an (annular resilient) element comprising a bundle of concentric, radially overlapping windings formed of a strand of resilient wire, a diameter of the annular element substantially the same as a diameter of at least one of the windings. As was previously explained, the diameter of Dwyer's anchor 14R is vastly different from the diameter of any one of the springs 144. Thus, Dwyer does not anticipate claim 70.

Claim 70 also recites the annular element adapted to be folded about its diametric axis to assume a smaller cross-sectional configuration and adapted to engage the inside of a body passage in a folded configuration, and when the folded ring is engaged with the body passage, the graft to extend along a length of a first blood vessel, *a part of the graft adapted to be*

*positioned past a point of intersection of the first blood vessel and a second blood vessel so as not to occlude an opening to permit communication of the intersection.* Referring to Figure 1 of Dwyer, the apexes of anchor 14R extend past the edge of the graft. Therefore, if a part of *the graft* were to be positioned *past* a point of intersection of a first blood vessel and a second blood vessel, the opening would be occluded by the graft. Because Dwyer's prosthesis does not have the same structure as the prosthesis of claim 70, Dwyer does not anticipate claim 70.

Under a similar analysis, claims 81 and 82 are also not anticipated by Dwyer.

Claim 75 is distinguished over Dwyer for at least the following reasons. For example, amended claim 75 calls for an annular resilient element having a diametric axis, the element comprising a bundle of concentric, radially overlapping windings formed of a strand of resilient metal wire. A diameter of the annular element is substantially the same as a diameter of at least one of the windings. As explained above, a spring of Dwyer does not have a diameter that is substantially the same as the diameter of the anchor. Thus, claim 75 is distinguished over Dwyer.

Claim 75 also calls for the annular element adapted to be folded about its diametric axis to assume a smaller cross-sectional configuration, the folded element adapted to be situated in the blood vessel with an arcuate portion of the folded element engaged with the blood vessel. The element is attached to an end of a graft with a tip of each fold of the folded element to contact the graft. Referring to Figure 1 of Dwyer, the graft is positioned with respect to the ring such that only a portion of the ring is in contact with the graft. For at least this additional reason, claim 75 is patentably distinguished over Dwyer.

## **MISCELLANEOUS**

### ***Support for Amendments to the Claims***

The foregoing and following examples and citations to the specification are for illustrative purposes only and are not intended to limit the claims to a particular embodiment of the present invention. Moreover, support for the claim amendments is not limited to the following citations to the specification; additional support may be found elsewhere in the specification.

Referring to Figures 1, 8, and 10, a resilient clamping ring 30 is shown. The clamping ring 30 may be formed of a plurality of strands 32 of resilient wire. *See, e.g.,* specification at page 7, lines 6-26. In one embodiment, the ring 30 may be formed by wrapping a single length

of wire around a mandrel having a central axis "C" and then securing the strands 32 into a bundle using ties 34. *Id.*

As shown in Figure 1, the ring 30 has a diameter  $D_K$ . Specification at page 8, lines 3-17. In some embodiments, the bundle of wrapped strands 32 and the ring 30 have corresponding diameters. *See, e.g.*, Figure 1. Furthermore, the wire that the individual strands 32 are formed from has a diameter and a surface. *See e.g.*, specification at page 7, line 27-page 8, line 2; Figures 1, 8, and 10. Referring to Figure 8, a cross-section of the clamping ring 30 that is taken generally along line 10-10 is shown in Figure 10. In this view, the cross-section of the ring is substantially circular. Moreover, the surfaces of the strands 32 are shown in this view to be near or close to each other and in some instances touching. *Id.*

As shown in Figure 3, the clamping ring 30 may be connected to a region 44 of a graft 42 in some embodiments. Specification at page 9, lines 24-28. In other embodiments, the ring 30 may be included in a bifurcated stent. *See, e.g.*, specification at page 17, lines 14-33; Figures 18 through 21.

Referring back to Figure 1, the ring 30 may be folded along its diametric axis. In this configuration, the ring may have a reduced cross-sectional configuration. Specification at page 8, lines 9-21; Figures 1 and 2. The graft 42 and ring 30 may be positioned within a blood vessel, such as the abdominal aorta, proximate an intersecting vessel, such as the right and left renal arteries. *See, e.g.*, Figures 4 and 5. In this position, a portion of the ring and graft may extend past the renal arteries while another portion of the ring and graft is located just distally of the openings to the arteries. Specification at page 10, line 24-page 11, line 9; Figures 4 and 5.

In view of at least the citations provided above, the specification is believed to support the claim amendments.

### ***Copending Applications***

A list of the copending applications is provided below. The examiner is requested to refer to the image file wrapper for the 10/118,409, 10/832,159, and 11/205,826 applications to view the claims.

1. Serial No. 10/118,409, filed April 8, 2002, which is a continuation of this application.


2. Serial No. 10/832,159, filed April 26, 2004, which is a divisional of this application.
3. Serial No. 11/205,826, filed August 17, 2005, which is a continuation of application 10/124,944, filed April 18, 2002 (now issued), which is a divisional of this application.
4. Serial No. 11/496,162, filed July 31, 2006, which is a continuation of application 10/118,409, filed April 8, 2002, which is a continuation of this application.

### **CONCLUSION**

In view of the amendments and remarks herein, the application is in condition for allowance. The examiner's prompt action in accordance therewith is respectfully requested. The commissioner is authorized to charge any additional fees, including extension of time fees, or credit any overpayment to Deposit Account No. 20-1504 (VAS.0002US).

Respectfully submitted,

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